IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3443 OF 2006.

1. Nilesh Sitaram Chavan
2. Rakesh Pratap Chavan
3. Umesh Sitaram Chavan ..Applicants

V/s

The State of Maharashtra ..Respondent.

Mr. S.V. Kotwal for the applicants.
Mr., P.A. Pol, APP for the State,

CORAM : S.C. DHARMADHIKARI, J.

DATE : 4TH OCTOBER, 2006.

P.C.

. The applicants are original accused and arrested on 21st August, 2005, 15th December, 2005 and 12th March, 2006 in connection with C.R. No. 156/2005, registered at Khadki Police Station, Pune under section 302, 143, 147, 148,,212 r/w section 149 of Indian Penal Code and the provisions of the Bombay Police Act referred to in Para 1 of this Application.

2. The investigations are complete and the charge-sheet is filed.

3. Mr. Kotwal appearing for the applicants in

support of this application invites my attention to the order passed by the trial Court on 25th January, 2006 in Criminal Mis. Application No. 2468/2005 and submits that accused No.1 to 3 who had preferred that application were enlarged on bail by the trial Court. He has invited my attention to the statement of eye witness Nazarkar, copy of which is annexed at Annexure "B" to this application. In the submission of Shri Kotwal, apart from the principle of parity, in this case as far as the present applicants are concerned, the recovery is of sickle, Hero Honda Motorcycle, knife and a Sattoor. The clothes are also recovered. He submits that as far as applicant No.1 is concerned the recovery is from an open place surrounding the temple , whereas the applicant No.2, recovery is from a terrace and that too after three months of the incident. Applicant No.3 is suppose to have shown the weapon Sattoor which is recovered on 12th March, 2006. The incident is of 8th August, 2005. In the submission of Mr. Kotwal, the Trial Court has denied bail to the present applicants despite their names not appearing in the FIR and the statement of Shri Nazarkar, only on the ground of this recovery. He submits that there is no C.A. report. The applicants deserves to be enlarged on bail

considering that the weapons utilised in the crime and the assault are recovered at the instance of three other persons. Mr. Kotwal also contends that the affidavit of I.O. which sets out several pending cases against the applicant should not be relied upon to deny them bail, when they are willing to abide by stringent conditions including staying out of Pune city after being released on bail.

4. The learned A.P.P. invited my attention to the affidavit of I.O. and more particularly to the recovery of weapons mentioned therein. He has also invited my attention to paras 11 to 13 of this affidavit and contended that accused No.2 Vijay who was released on bail has been murdered by another rival gang on 21st September, 2006.

5. After perusing these materials, prima facie, the incident has arisen out of rivalry between two gangs. The deceased was involved as stated by his father in several crimes. However, one case being pending against him, he had gone to the Court in that connection on the relevant date. The statement of Nazarkar refers to several incidents in which the deceased was involved.

It appears that applicants are part of rival gang controlled by one Ghisadi. It is on account of enemity between two Gangs that the incident took place. The statement of Nazarkar shows that he has referred to participation of about 7 to 9 persons, ultimately, he names one Pintya @ Vaibhav Mane, Dinesh Chavan, and Raju Shetty. According to him these accused were carrying weapons namely axe, sickle, and sattoor. They were assaulting deceased Sameer.

6. The learned Trial Judge has sought to distinguish the earlier order passed on the ground that there is recovery as far as present applicants are concerned and further on account of gang rivalry, their release would be detrimental in public interest and would affect public peace adversely.

7. In my view, when the statement of the eye witeness Nazarkar does not refer to the applicants specifically, then at least to this extent their case is on par with the other accused who are enlarged on bail. Similarly, as far as the recoveries are concerned, it does not appear to me prima facie that in the absence of any overt act on their part, these recoveries would

straight way connect them with the crime. Once, the statement of eye witness and the father of the deceased does not name the present applicants, then such recoveries at belated stage with no corroborating material in the form of C.A. report, prima facie would make out a case for the applicants being enlarged on bail.

8. The effect of the applicants being involved in similar cases has been referred to by the learned Trial Judge. However, in the light of the fact that the applicants are agreeing to stay away from Pune City till the conclusion of the trial with compliance of further conditions, in my view, they deserve to be enlarged on bail. The distinguishing features found by the Trial Court do not make out a case for denial of bail to the Applicants. Hence, the following order:-

i) The applicants arrested in connection with Cr.No. 156/2005 registered with Khadki Police Station, Pune, shall be enlarged on bail subject to furnishing a personal bond of Rs.25,000/- each with one or two local sureties in the like amount.

ii) The applicants shall not enter into the limits of Pune Police Commissionerate Limits till the conclusion of the trial.

iii) The applicants shall report to the nearest police station once in a week till the conclusion of the trial. Needless to state that this order does not prevent the applicants from attending the Courts in Pune where the cases are pending.

iv) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their place of residence and addresses where they proposes to stay after they are enlarged on bail. The applicants will not change their residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

v) The bail is granted subject to condition that the applicants shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

vi) The applicants shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicants to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) Parties to act on an authenticated copy of this order.

(S.C. DHARMADHIKARI, J.)